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No. 88-266

In The
Supreme Court of the United States
October Term, 1988

OKLAHOMA TAX COMMISSION,

Petitioner,

vs.

JAN GRAHAM, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF OF AMICUS CURIAE SAC AND FOX NATION, KAW TRIBE OF OKLAHOMA, DELAWARE TRIBE OF WESTERN OKLAHOMA, CHEYENNE-ARAPAHO TRIBES OF OKLAHOMA, TONKAWA TRIBE OF OKLAHOMA, ABSENTEE-SHAWNEE TRIBE OF OKLAHOMA, and KICKAPOO TRIBE OF OKLAHOMA IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE

The Sac and Fox Nation, and the Kaw, Delaware (Western), Cheyenne-Arapaho, Tonkawa, Absentee-Shawnee, and Kickapoo Tribes of Oklahoma are federally recognized Indian tribes located in the former Oklahoma Territory portion of the State of Oklahoma (the Anadarko Area Office jurisdiction in western Oklahoma). Several of these Tribes are organized pursuant to Constitutions and Charters adopted pursuant to the Act of June 26, 1936, 49 Stat. 1967 (25 U.S.C. § 503).[1] The Kaw Tribe of Oklahoma maintains its ancient traditional government as modified by its own tribal law where experience has shown necessary, and is similar in that respect to the Navajo Nation in that it is not organized pursuant to any federal statute. The Sac and Fox Nation, and the Kickapoo, Absentee-Shawnee, and Cheyenne-Arapaho Tribes maintain tribal courts supported by Bureau of Indian Affairs grants and contracts, tribal tax revenues, and tribal funds. The Kaw, Delaware, and Tonkawa Tribe exercise their judicial powers within the Court of Indian Offenses administered by the Anadarko Area Office of the Bureau of Indian Affairs, 25 C.F.R. § 11.1 (1987).

Pursuant to these fundamental foundations, these Indian tribes have enacted, and enforce, a myriad of statutes which regulate the conduct of all persons within the Indian country subject to the jurisdiction of their tribe.

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[1]Selected portions of the Constitution and Federal Charter of the Sac and Fox Nation are reproduced in Appendix I and Appendix II respectively for the edification of the Court.

Some of the laws enacted by one or more of these tribes include provisions authorizing the incorporation of business and non-profit corporations, removal or discipline of elected tribal officials, the regulation of the gaming industry, regulation of the mineral mining industry including oil and gas mining, regulating security agreements and the filing and enforcement of liens, provisions for the levy and collection of tribal taxes, regulation of certain industries, provisions providing for public health facilities and public housing, provisions defining the punishment for criminal offenses and providing for police and fire protection, as well as provisions for complete trial and appellate court systems with what is believed to be model tribal laws relating to civil, criminal, appellate, and juvenile procedure, and rules of evidence. Interpreters are provided in the tribal courts when needed.

In addition to these statutory enactments, the courts of these tribes enforce tribal traditions and customs as the common law of the affected tribe in a manner similar to that in which American customs and traditions are enforced as the common law in state and federal courts. Actions relating to marriage, divorce, child custody, guardianships, probate of estates, contract rights, tortious conduct, and requests for relief in equity are not uncommon.

These laws are enforced within the Indian country of each tribe. This consists, at a minimum, of the trust or restricted allotments and lands owned by the tribe reserved from allotment or acquired and set aside in trust by the United States or restricted against alienation by the United States pursuant to an Act of Congress, 25 U.S.C. §§ 177, 335, 465, 501. Some tribes maintain the posi-

tion that their original reservation boundaries were not disestablished, or that at worst, their reservation was diminished but not disestablished in the allotment process. This question has not yet been authoritatively determined under the modern definition of Indian country or the modern test for reservation disestablishment or diminishment adopted by this Court in response to the enactment of 18 U.S.C. § 1151.

The Tribes have a direct interest in the outcome of this action insofar as the Oklahoma Tax Commission requests this Court to render a sweeping decision judicially abolishing federally recognized tribal governments and Indian country without Congressional sanction.

SUMMARY OF ARGUMENT

The Tenth Circuit properly decided in this action that the original suit by the Oklahoma Tax Commission was removable, and that sovereign immunity barred the suit in the first instance. Given the *per se* rule adopted by this Court that States cannot tax Indian Tribes without clear and unambiguous Congressional consent, and the settled law that an Indian Tribe cannot be sued without its express consent or the unambiguous consent of Congress, this is clearly a case where the Oklahoma Tax Commission's original complaint was required to allege both Congressional consent to levy the taxes claimed from the Chickasaw Nation, and consent for the Chickasaw Nation to be sued. Both of these allegations are necessary, both raise federal questions, and the failure to make these alle-

gations does not take this action outside the complete pre-emption doctrine announced in *Caterpillar, Inc. v. Williams,* 107 S.Ct. 2425, 2430 (1987) and *Oneida Indian Nation v. County of Oneida,* 414 U.S. 661, 675 (1974).

The Oklahoma Tax Commission's brief in this action is replete with generalizations and unsupported argument constituting an attempt to resurrect a legal dinosaur—the mythological "Oklahoma Indian." The myth of the "Oklahoma Indian" has been laid to rest in the federal courts in recent years by critical examination of the specific treaties and statutes applicable to the various Indian Tribes now in Oklahoma—over thirty in number[2]—on a Tribe by Tribe basis, rather than reliance upon platonic notions of the discredited assimilation theory and paternalistic attitudes.

Simply stated, most of the general laws enacted by Congress in the period between 1899 and 1910 dealing specifically with Indian Tribes in Oklahoma apply by their terms only to the Cherokee, Creek, Seminole, Choctaw, and Chickasaw Nations or Tribes, and have no effect whatsoever upon the other twenty-five plus Tribes resident within Oklahoma. These Tribes, bands, and Nations—when their

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[2]Cohen, Handbook Of Federal Indian Law 770 (1982 Ed.) (Michie Bobbs-Merrill, Publisher) quoting Pipestem, *The Journey from Ex Parte Crow Dog to Littlechief: A Survey of Tribal Civil and Criminal Jurisdiction in Western Oklahoma* 6 Amer. Indian L. Rev. 1, 3-4 (1978). *See,* also, Pipestem & Rice, *The Mythology of the Oklahoma Indians: A Survey of the Legal Status of Indian Tribes in Oklahoma* 6 Amer. Indian L. Rev. 259 (1978); Work, *The "Terminated" Five Tribes of Oklahoma: The Effect of Federal Legislation and Administrative Treatment on the Government of the Seminole Nation* 6 Amer. Indian L. Rev. 8 (1978). The 1982 edition of Cohen's Handbook contains a summary of the legal status of Indian Tribes in Oklahoma.

treaties and the Acts of Congress which relate to them are analyzed on a case by case basis—retain generally the full cornucopia of legal powers and immunities they enpoyed prior to the creation of Oklahoma Territory and the State of Oklahoma.

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ARGUMENT

I. THIS ACTION WAS PROPERLY REMOVED AND DISMISSED

> [I]f a federal cause of action completely pre-empts a state cause of action any complaint that comes within the scope of the federal cause of action necessarily "arises under" federal law. *Caterpillar Inc. v. Williams,* 107 S.Ct. 2425, 2430 (1987), quoting *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.,* 463 U.S. 1, 24 (1983).

In the special area of state taxation of Indian tribes and tribal members, we have adopted a *per se* rule. *California v. Cabazon Band of Mission Indians,* 107 S.Ct. 1083 (1987).

In keeping with its plenary authority over Indian affairs, Congress can authorize the imposition of state taxes on Indian tribes and individual Indians. It has not done so often, and the Court consistently has held that it will find the Indians exemption from state taxes lifted only when Congress has made its intention to do so unmistakably clear. *Montana v. Blackfeet Tribe,* 471 U.S. 759, 765 (1985).

Indian tribes have long been recognized as possessing the common-law immunity from suit traditionally enjoyed by sovereign powers. This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress. But "without congres-

> sional authorization," the "Indian Nations are exempt from suit." It is settled that a waiver of sovereign immunity "cannot be implied but must be unequivocally expressed". *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (citations omitted).
>
> [I]n no case shall suit be instituted against the tribal government without its consent. Chickasaw Allotment Agreement ratified at § 29, Act of June 28, 1898, 30 Stat. 495.

It is beyond cavil that the Indian Tribes in Oklahoma, including the Chickasaw Nation, are immune from suit absent express authorization from Congress or the tribal government. This Court has repeatedly confirmed the sovereign immunity of Indian Tribes, bands, and Nations, and this is the settled law. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *Puyallup Tribe, Inc. v. Washington Dept. of Game*, 433 U.S. 165 (1977) (recognizing tribal immunity for off-reservation fishing activities); *Turner v. United States*, 248 U.S. 354 (1919) (a special Congressional Act was required to authorize a lawsuit against the Creek Nation in the State of Oklahoma). The case law from the federal district and circuit courts of appeal holding Indian Tribes immune from suit absent tribal or congressional consent is legion. *See, Bottomly v. Passamaquoddy Tribe*, 599 F.2d 1061 (1st Cir. 1979); *Haile v. Saunooke*, 246 F.2d 293 (4th Cir. 1957); *Maryland Casualty Company v. National Bank*, 361 F.2d 517 (5th Cir. 1966); *Thebo v. Choctaw Tribe*, 66 F. 372 (8th Cir. 1895); *Boe v. Fort Belknap Indian Community*, 642 F.2d 276 (9th Cir. 1981); *Cherokee Nation v. State*, 461 F.2d 674 (10th Cir. 1972); *Ramey Construction Company v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 314 (10th Cir. 1982), and their progenitors and progeny.

Perhaps most instructive in the present case is *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506 (1940), quoted in *Santa Clara Pueblo v. Martinez*, supra, in which this Court specifically held the Chickasaw Nation in Oklahoma immune from suit by reason of sovereign immunity. This Court further recognized that such immunity would prevail even if the tribal government had been extinguished, while recognizing in footnote 8 at 309 U.S. 512 that Congress had unequivocally continued the tribal government of the Chickasaw Nation indefinitely by the Section 28 of the Act of April 26, 1906, 34 Stat. 148. Where is the Congressional act which authorizes the present suit against the Chickasaw Nation? Simply stated, none exists.

In *California v. Cabazon Band of Mission Indians*, 107 S.Ct. 1083 (1987), this Court recognized that the federal law imposed a *per se* rule prohibiting state taxation of Indian Tribes absent the express consent of Congress. Contrary to the Oklahoma Tax Commission's position, the normal rules in tax cases do not apply when Indians or Indian property are involved. Specifically, the Constitution vests the Federal Government with exclusive authority over relations with Indian Tribes, Indian tribes and individuals generally are exempt from state taxation within their own territory, States may tax Indians only when Congress has manifested clearly its consent to such taxation, and statutes are to be construed liberally in favor of the Indians with ambiguous provisions interpreted to their benefit. *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 764, 766 (1985) (citations omitted).

Congress expressly reserved, in Section 1 of the Oklahoma Organic Act of May 2, 1890, 26 Stat. 81, and again

in Section 1 of the Oklahoma Enabling Act of June 16, 1906, 34 Stat. 267, its complete and exclusive authority over the persons, property and other rights of Indians "by treaties, agreement, law or otherwise." Pursuant to these acts, Article 10, § 6 of the Oklahoma Constitution exempts from state taxation:

> such property as may be exempt by reason of treaty stipulations, existing between the Indians and the United States government, or by federal laws, during the force and effect of such treaties or federal laws

and Article 1, § 3 thereof states in pertinent part:

> The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to . . . all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States.

The intent of the Oklahoma Organic Act with respect to the Indian tribes, and therefore that of the Oklahoma Enabling Act which contains substantially similar language, is illustrated by an exchange between Congressmen Mansur and Turner during the floor debates. The purpose of the Oklahoma government vis-a-vis the Indian tribes and their territory was explained as follows:

> MR. MANSUR: Is the gentleman aware that the laws of the United States in full force today make it a criminal offense to take intoxicating liquor into the reservation of any Indians?
>
> MR. TURNER: But I suggest to the gentleman that this is no longer a reservation, but a Territory.

> MR. MANSUR: But I desire to remind the gentleman that, as this bill expressly declares, *this Territorial government or organization is not for any Indian reservation whatever; it does not apply to Indian reservations.*

51 Cong. Rec. 2104 (1890) (remarks of Messrs. Mansur and Turner) (emphasis added). Perhaps in part because the allotment agreements were then being negotiated, Congressman Mansur emphasized that the Indian tribes and their reservations were to be unaffected by the creation of Oklahoma:

> I challenge any gentleman on this floor—I care not who he is—to take any one of the first twenty-four sections of this bill [the Sections relating to Oklahoma Territory] and show where it touches a red man at all. I repeat, for I would like to have it understood, that the first twenty-four sections of this bill do not relate to a red man or to a tribe, do not relate to the Indians in any manner whatever. The first twenty-four sections relate to white men only, of whom there are 200,000 in that Territory now asking for law and order and legislation. . . .
>
> Now, as to every Indian reservation within the whole limits of the Indian territory as now organized, we say expressly that those first twenty-four sections of the act thus organizing this Territorial government shall not apply. Remember, gentlemen, we say in plain, clear language that as to every Indian tribe and as to the land of every Indian tribe, none of these twenty-four sections which apply to the white people shall operate.

Id. at 2176. Notwithstanding the claims of the Oklahoma Tax Commission to the contrary, it appears that the proponents of the bill to create Oklahoma did not think they

had to destroy tribal government or Indian reservations in order to accomplish their purpose.

The outgrowth of this summary review, is that clearly the *per se* rule of *California v. Cabazon Band of Mission Indians*, 107 S.Ct. 1083 (1987) and *Montana v. Blackfeet Tribe*, 471 U.S. 759, 765 (1985) remains applicable to Indian tribes in Oklahoma in general, and the Chickasaw Nation in particular. The corollary to this rule is that it is incumbent upon the Oklahoma Tax Commission to plead and prove specific unambiguous congressional authority both to levy and collect the particular taxes at issue, and to bring the instant lawsuit against the Chickasaw Nation. *See, County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, (1985); *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 852 (1985). Simply stated, state authority to tax an Indian tribe, and the authority of state courts to entertain a claim against an Indian tribe are completely pre-empted by federal law in the absence of Congressional action to the contrary. Therefore, this case was properly removed, and properly dismissed. *Caterpillar, Inc. v. Williams*, 107 S.Ct. 2425 (1987); *Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal.*, 463 U.S. 1 (1983); *Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co.*, 258 U.S. 377 (1922).

II. BOTH TRIBAL GOVERNMENT AND TRIBAL INDIAN COUNTRY ARE ALIVE AND WELL IN OKLAHOMA

The presence of allotment provisions in the 1892 Act cannot be interpreted to mean that the reservation was to be terminated. This is apparent from the very language of 18 U.S.C. § 1151, defining Indian country "notwithstanding the issuance of any patent" therein. . . . Congress was fully aware of the means by

which termination could be effected. *Mattz v. Arnett*, 412 U.S. 481, 504 (1973).

Citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for their protection. *United States v. Nice*, 241 U.S. 591, 598 (1916).

Viewing the Curtis act in the light of the previous decisions of this court and the dealings between the Chickasaws and the United States, we are of opinion that one of the objects occasioning the adoption of that act by Congress, having in view the peace and welfare of the Chickasaws, was to permit the continued exercise, by the legislative body of the tribe, of such a power as is here complained of [taxation of non-Indians], subject to a veto power in the President over such legislation, as a preventive of arbitrary and injudicious action. *Morris v. Hitchcock*, 194 U.S. 384, 393 (1904).

The argument of the Oklahoma Tax Commission may be summarized as follows: (1) the reservations of the Indian Tribes in Oklahoma must have been somehow extinguished in order for (a) allotments of land to take place or (b) citizenship to be extended to the members of the tribes or (c) for Oklahoma to be admitted to the Union, (2) without a reservation there can be no tribal government or tribal immunities; and, therefore, there are no tribal governments and no Indian Country in Oklahoma. Each step in this circular argument has been rejected by this Court.

A. INDIAN COUNTRY IN OKLAHOMA

But authority in respect of crimes committed by or against Indians continued after the admission of the

state [of Oklahoma] as it was before, in virtue of the long-settled rule that such Indians are wards of the nation, in respect of whom there is devolved upon the federal government "the duty of protection and with [sic] the power." The guardianship of the United States over the Osage Indians has not been abandoned; they are still the wards of the nation; and it rests with Congress alone to determine when that relationship shall cease.

. . . .

Viewed from that premise, it would be quite unreasonable to attribute to Congress an intention to extend the protection of the criminal law to an Indian upon a trust allotment and withhold it from one upon a restricted allotment, and we find nothing in the nature of the subject-matter or in the words of the statute which would justify us in applying the term "Indian country" to the one and not to the other. *United States v. Ramsey*, 271 U.S. 467, 469, 472 (1926). (citations omitted).

The term "Indian Country" is perhaps first defined by statute in the Act of June 30, 1834, 4 Stat. 729 (1834) as "all that part of the United States . . . to which Indian title has not been extinguished", and included within its terms the area which now comprises the State of Oklahoma. The effect of the early statutes defining Indian country was summarized by the noted Indian law scholar, Felix Cohen, in his *Handbook of Federal Indian Law* 6 (1942 Ed.) as follows:

> Indian country in all these statutes is territory, wherever situated, within which tribal law is generally applicable, federal law is applicable only in special cases designated by statute, and state law is not applicable at all.[3]

Although the 1834 definition of Indian country was not included in the Revised Statutes of the United States, and therefore repealed, it provided a useful mechanism for the Court to apply statutory laws relating to "Indian Country" and "Indian Reservations". *Donnelly v. United States*, 228 U.S. 243, 269 (1913). In a series of now famous cases, the Court developed a definition of "Indian Country" at common law which included Indian reservations, *Bates v. Clark*, 95 U.S. 204 (1887); *Donnelly v. United States*, 228 U.S. 243 (1913), trust and restricted Indian allotments, *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Ramsey*, 271 U.S. 467 (1926), and areas set aside for the use and occupancy of Indians (dependant Indian communities) although not called a "reservation". *United States v. Sandoval*, 231 U.S. 28 (1913); *United States v. McGowan*, 302 U.S. 535 (1938).

In *Bates v. Clark*, 95 U.S. 204, 209 (1887) the Court stated:

> It follows from this that all the country described by the act of 1834 as Indian country remains Indian

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[3]The complete prohibition as to the application of state law in the Indian Country has been modified to the extent Congress has deemed proper. 18 U.S.C. § 1161 (liquor laws); Act of February 15, 1929, Ch. 216, 45 Stat. 1185 (health and education) (25 U.S.C. § 231); 25 U.S.C. §§ 232, 233 (New York); 18 U.S.C. § 1162 (criminal jurisdiction in Public Law 83-280 states); 28 U.S.C. § 1360 (civil jurisdiction in Public Law 83-280 states); 25 U.S.C. §§ 1321 *et seq.* (assumption and retrocession of civil or criminal jurisdiction by states which are not mandatory Public Law 83-280 states). Oklahoma was not granted, and has never assumed, jurisdiction over Indian country within its borders pursuant to Public Law 83-280.

> country so long as the Indians retain their original title to the soil, and ceases to be Indian country whenever they lose that title, in the absence of any different provision by treaty or by act of Congress.

Although the Indian country status had been tied to aboriginal ownership of the soil, this Court in *Donnelly* extended the application of the term to lands reserved for tribes carved from the public domain. Tribal ownership, however, remained the benchmark indicia of Indian country status for Indian reservations as a historical consequence of the 1834 act. In pre-1948 decisions of this and other courts, as well as those cases which reiy without critical analysis upon such decisions, the ownership of title to the soil was often critical to the status of land as Indian country or "reservation" land.

The foregoing decisions left open the question of whether land within the exterior boundaries of an Indian reservation which was held in fee (in other words an "open" or "assimilated" reservation) was Indian Country. Cohen, *Handbook of Federal Indian Law* 8 (1942 Ed.). The practical effect of this "open reservation" issue was whether federal and tribal jurisdiction remained exclusive in reservation areas where allotments had been taken and the surplus sold, or where trust periods had expired, or where restrictions against alienation had been removed.

In 1948, Congress resolved this issue in favor of federal and tribal jurisdiction over trust or fee patented lands within reservations, and codified the Supreme Courts existing common law classifications of Indian Country by the Act of June 25, 1948, 62 Stat. 757, codified in its present form at 18 U.S.C. § 1151, which states:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

United States v. Mazurie, 419 U.S. 544, 547 (1975). Oklahoma was not excepted from the terms of this Act. The impact of this Congressional action was to render obsolete Court decisions which tied Indian Country status of Indian reservations to issues of land title, and to define by statute the territorial area for the operation of tribal government. The question of continuing land ownership remains relevant only in the context of Indian allotments outside Indian reservations. This Court, while often speaking in terms of "reservation" or "allotment" or "dependent Indian community" as relevant in a particular circumstance has, since 1948, clearly held that "Indian country" is the legally recognized term of art defining the territorial area for the exercise of tribal self-government. *United States v. Mazurie,* 419 U.S. 544 (1975)[4]; *DeCoteau v. District Court,* 420 U.S. 425 (1975)[5]; *United States v.*

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[4]"Cases such as *Worcester,* supra, and *Kagama,* supra, surely establish the proposition that Indian tribes within 'Indian country' are a good deal more than "private, voluntary organizations." *Mazurie* at U.S. 557.

[5]In footnote 2 of the opinion, the Court stated: "If the lands in question are within a continuing "reservation," juris-

(Continued on following page)

John, 437 U.S. 634 (1978)[6]; *Solem v. Bartlett*, 465 U.S. 463 (1984).[7]

In response to this changed definition, this Court adopted a new rule to determine the Indian country status of reservation areas in *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); *DeCoteau v. District Court*, 420 U.S. 425 (1975), and *Solem v. Bartlett*, 465 U.S. 463 (1984). These cases teach that once an area of land has been set apart as an Indian reser-

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(Continued from previous page)

diction is in the tribe and the Federal Government "notwithstanding the issuance of any patent . . . . On the other hand, if the lands are not within a continuing reservation, jurisdiction is in the State, except for those land parcels which are "Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same." While § 1151 is concerned on its face, only with criminal jurisdiction, the Court has recognized that it generally applies as well to questions of civil jurisdiction." (citations omitted). After concluding that the Sisseton-Wahpeton reservation had been disestablished, the Court concluded: "In such a situation, exclusive tribal and federal jurisdiction is limited to the retained allotments. 18 U.S.C. § 1151(c)." *Id.* at U.S. 446.

[6]At page 649 of the opinion, the Court stated: "With certain exceptions not pertinent here, § 1151 includes within the term "Indian country" three categories of land. The first, with which we are here concerned, is [Indian reservations]." In the accompanying footnote #17, the Court stated in part: "Inasmuch as we find in the first category a sufficient basis for the exercise of federal jurisdiction in the case, we need not consider the second and third categories [of Indian country]."

[7]In footnote 8 at page 467 of the opinion the Court stated: "Regardless of whether the original reservation was diminished, federal and tribal courts have exclusive jurisdiction over those portions of the opened lands that were and have remained Indian allotments. In addition, opened lands that have been restored to reservation status by subsequent Acts of Congress fall within the exclusive criminal jurisdiction of federal and tribal courts." (citations omitted).

vation, all tracts within that area remain Indian country until the reservation is extinguished by Congress. The corollary to this rule is that the statute or treaty extinguishing the reservation must be clear on its face, or, if the statutory language could be interpreted to extinguish the reservation but is ambiguous, the legislative history and tribal understanding must clearly indicate an intent to terminate reservation status. Anything less than this clear language or showing of intent and understanding will result in a finding that the reservation continues as Indian country due to the traditional rules that ambiguities are to be resolved to the benefit of the Indians, and that Indian treaties and agreements must be interpreted as the Indians would have understood them.

Research has revealed no law applicable to the Chickasaw Nation containing language which this Court has held to extinguish a reservation boundary since 1948[8]. In fact, the allotment agreements of the Chickasaw Nation do not even contain general cession language similar to that which

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[8]In *Mattz v. Arnett*, 412 U.S. 481 (1973) the Court gave examples of language it considered clear expressions of the intent to extinguish reservation boundaries at footnote 22, page 504: "The Smith River reservation is hereby discontinued" from 15 Stat. 221 (1868); the North Half of the Colville Indian Reservation "be, and is hereby, vacated and restored to the public domain" from 27 Stat. 63 (1892); "the reservation lines of the said Ponca and Otoe and Missouria Indian reservations be, and the same are hereby, abolished" from 33 Stat. 218 (1904). The Ponca, Otoe, and Missouria reservations referenced were in Oklahoma, and the lack of such clear language with respect to other Indian Tribes in Oklahoma indicates that Congress only intended to extinguish these particular reservations. In fact, the section of this statute abolishing these three reservations acknowledges the continuing status of the Kaw (Kansas) Indian reservation in Oklahoma.

this Court determined to be suited to disestablishment but ambiguous in *DeCoteau v. District Court,* 420 U.S. 425 (1975), although these agreements do contain specific extremely limited cessions to the United States. These limited cessions, Act of July 1, 1902, § 64, 32 Stat. 641, the reservation from allotment of certain lands for tribal court-houses, jails, schools, and other tribal public buildings, *Id.* at § 26, the fact that Congress never clearly extinguished the boundaries of the Chickasaw reservation as it did the Ponca, Otoe, and Missouria reservations in Oklahoma, Congress' determnation to continue the tribal government of the Chickasaw Nation indefinitely, Act of April 26, 1906, § 28, 34 Stat. 137, 148 (1906), and the continued appropriations for certain Indian reservations in Oklahoma, annuities, and other federal protection[9], all emphasize that even though Congress believed that eventually the Chickasaw reservation would be extinguished and the tribal government terminated these events have not yet occurred.

Even assuming, *arguendo,* that the original boundries of the Chickasaw reservation—or any other reservation in Oklahoma for that matter—were terminated, it is clear that all Indian allotments remain as Indian country, 18 U.S.C. § 1151; *United States v. Ramsey,* 271 U.S. 467 (1926); *DeCoteau v. District Court,* 420 U.S. 425 (1975), as well as all land owned by tribes whenever acquired held in trust by the United States or restricted against alienation by force of 25 U.S.C. § 177. Tribal lands would constitute a diminished reservation via exception or reservation in specific allotment agreements, or via acquisition

[9]Act of March 1, 1907, 34 Stat. 1015; Act of April 30, 1908, 35 Stat. 70; Act of March 3, 1909, 35 Stat. 781; Act of April 4, 1910, 36 Stat. 269; Act of August 24, 1912, §§ 17, 18, 37 Stat. 497.

in trust or restricted status pursuant to federal law and 25 U.S.C. § 335 which was enacted to clarify the jurisdictional status of acquired lands by classifying acquired lands as Indian reservations or allotments.

Clearly, the determination of whether particular tracts of land in Oklahoma, as elsewhere, constitutes Indian country requires a scholarly judicial inquiry into the specific treaties, allotment agreements, and acts of Congress which affect the area and Tribe in question, not reference to wishful generalities and misapplication of law. Every Court which has considered the question in the modern context has determined that Indian country does exist in Oklahoma. *United States v. Littlechief,* No. 76-207-D (W.D. Okla., Nov. 7, 1977) followed and reprinted in *State v. Littlechief,* 573 P.2d 263 (Okla. Crim. 1978); *Cheyenne-Araphoe Tribes v. Oklahoma,* 618 F.2d 665 (10th Cir. 1980); *C.M.G. v. State,* 594 P.2d 798 (Okla. Crim.) cert. den. 444 U.S. 992 (1979); *Indian Country U.S.A., Inc. v. State of Oklahoma ex. rel. Oklahoma Tax Commission,* 829 F.2d 967 (10th Cir. 1987); *Ahboah v. Housing Authority of Kiowa Tribe of Indians,* 660 P.2d 625 (Okla. 1983).

B. TRIBAL GOVERNMENTS IN OKLAHOMA

> It rests with Congress to determine when the guardianship relation shall cease. Thus far Congress has not terminated that relation with respect to the Creek Nation and its members. That Nation still exists, and has recently been authorized to resume some of its former powers. Act of June 26, 1936, 49 Stat. 1967, 25 U.S.C. §§ 501 et seq. *Board of County Comm'rs. of Creek County v. Seber,* 318 U.S. 705, 718 (1943). (citations omitted).
>
> Accordingly, we hold that the Curtis Act was repealed by the [Oklahoma Indian Welfare Act, 25 U.S.C. §§ 501

et seq.] and that therefore the Muscogee (Creek) Nation has the power to establish Tribal Courts with civil and criminal jurisdiction, subject, of course, to the limitations imposed by statutes *generally* applicable to *all tribes*. *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439 (D.C. Cir. 1988). (emphasis by the court).

In our opinion, the purpose expressed in [Section 1 of the Oklahoma Enabling Act, 34 Stat. 267] to reserve to the government of the United States the authority to make laws and regulations in the future respecting the Indians is, under the circumstances, evidence tending to negative a purpose to repeal by implication the existing laws and regulations on the subject.

. . . . .

The reservaton of the authority of Congress to legislate in the future respecting the Indians residing within the new state is clearly supportable under the Federal Constitution, art. 1, § 8, which confers upon Congress the power "to regulate commerce . . . with the Indian tribes." It has been repeatedly held by this court that under this clause traffic or intercourse with an Indian tribe or with a member of such a tribe is subject to the regulation of Congress, although it be within the limits of a state. *Ex Parte Webb*, 225 U.S. 663, 683 (1912).

Prior to 1890, the whole of what is now the State of Oklahoma was known as the "Indian Territory" with the exception of the Oklahoma panhandle and a relatively small area in the extreme southwest part of the State which was claimed by Texas. This area referred to prior to 1890 as the "Indian Territory" contained several Indian reservations of varying size, and large areas of land not assigned to any tribe but which had been ceded to the United States after the civil war by the Five Civilized Tribes (Cherokee, Creek, Choctaw, Chickasaw, and Seminole). The Act of May 2, 1890, 26 Stat. 81, created the Territory of Oklahoma out of what was basically the western two-thirds of this land area.

The significance of this action lies not in the creation of the Territory itself, but in the fact that thereafter the laws applicable to Indian tribes in the "Indian Territory" did not apply in the Territory of Oklahoma. That this was understood is shown by the allotment agreement of the Sac and Fox Nation of February 13, 1891, 26 Stat. 749, wherein it was recited "Whereas [the Jerome Commission] did . . . conclude an agreement with the Sac and Fox Nation of Indians, occupying a reservation in the Territory of Oklahoma, formerly a part of the Indian Territory."

Simply stated, research reveals no Act of Congress curtailing the governing authority of those Tribes situated within the Territory of Oklahoma as defined by the 1890 Act which are not applicable to Indian tribes throughout the United States. The Sac and Fox Nation has been said to have extensive powers of self-government. *Tenneco Oil Company v. Sac and Fox Tribe of Indians of Oklahoma*, 725 F.2d 572 (10th Cir. 1984). The Osage Tribe, and its dependent Indian villages, are governed pursuant to the federal regulations, 25 C.F.R. Parts 90, 91 (1987). The Bureau of Indian Affairs maintains Courts of Indian Offenses for the tribes in the Anadarko Area Office jurisdiction (generally Oklahoma Territory) who do not have their own tribal courts, 25 C.F.R. § 11.1 (a) (19) (1987). Several tribes in western Oklahoma, includ-

ing the Sac and Fox Nation, the Kickapoo Tribe of Oklahoma, the Iowa Tribe of Oklahoma, the Absentee-Shawnee Tribe of Oklahoma, the Cheyenne and Arapaho Tribes of Oklahoma, and the Citizen Band Potawatomi of Oklahoma have established their own tribal courts and receive Bureau of Indian Affairs assistance in the funding of those courts and tribal law enforcement agencies to supplement tribal tax revenue and other tribal funds. The general powers of self-government of the tribes over those areas that remain Indian country in the area which comprised the Territory of Oklahoma remain undiminished. Cohen, Handbook of Federal Indian Law 779 (1982 Ed.).

As to the tribes which remained within the remnant of the Indian Territory after 1890, the situation is more complex. Some statutes affecting the tribes therein deal only with the Five Civilized Tribes, while others affected all tribes in the remaining Indian Territory, and others affected only specified tribes. However, for the purposes of this case, it is sufficient to note that, as to the government of the Chickasaw Nation, the Choctaw and Chickasaw allotment agreement ratified as Section 29 of the Curtis Act of June 28, 1898, 30 Stat. 495 provided:

> It is further agreed, in view of the modification of legislative authority and judicial jurisdiction herein provided, and of the necessity of the continuance of the tribal governments so modified, in order to carry out the requirements of this agreement, that the same shall continue . . . .[10]

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[10]The time limitation on the continuance of the Choctaw and Chickasaw governments contained therein was removed by the Act of April 26, 1906, 34 Stat. 148.

and this provision superceded any inconsistent provision of the Curtis Act.[11] Finally, Congress has exercised its superintending authority over the Five Civilized Tribes by confirming in them the right to recover any powers lost, to reorganize, 25 U.S.C. §§ 501 et seq., and to elect their own governing leadership, Act of October 22, 1970, 84 Stat. 1091, regardless of historical administrative treatment. There can be no doubt that the tribes in the Indian Territory as it was defined after 1890 retain substantial governmental authority.

—o—

CONCLUSION

It is clear that the position of the Oklahoma Tax Commission is untenable. The shrill clamor and doomsday predictions contained in the brief of the Oklahoma Tax Commission are supported by neither law nor logic. Arizona and New Mexico, which were admitted into the Union by the same enabling act which admitted Oklahoma, apparently function very well as a part of the federal republic with extremely large Indian reservations and other areas defined as Indian country within their borders. There is simply no good reason to believe that the Indian tribes in Oklahoma are conceptually different from the Indian tribes in Arizona, New Mexico, and elsewhere in

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[11]*See, also,* Act of July 1, 1898, 30 Stat. 567, ratifying the allotment agreement with the Seminole Nation which states: "the courts of said nation shall retain all the jurisdiction which they now have, except as herein transferred to the courts of the United States." Another provision of the same agreement repeals all parts of the Act of June 7, 1897, 30 Stat. 62 "in any manner affecting the proceedings of the general council of the Seminole National." Although modified in a limited fashion, the Tribal governments of the Five Civilized Tribes continue to exist as Indian tribal governments entitled to the protection of

(Continued on following page)

the classical "Indian states", except as may be specifically otherwise provided by Congress.

For instance, the Cherokee Nation in Oklahoma and the United Keetoowah Band of Cherokees in Oklahoma constitute the lineal descendants and political heirs of the Cherokee Nation of the seminal cases of *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832) and *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). The Shawnee, Wea, and Miami tribes who comprised *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1866) were later removed to the Indian Territory, Act of March 2, 1889, 25 Stat. 1013, I Kappler, Indian Affairs Laws and Treaties 414 (note), and allotted in what is now the State of Oklahoma.

Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973) is not instructive, except as it would relate to Indian activities outside the Indian country, because it fails to consider the impact of the 1948 definition of Indian country as expounded upon in later cases in this Court, and instead is limited to a discussion of the even then defunct federal instrumentality theory. Further, the land at issue here lies within the exterior boundary of the Chickasaw reservation, not in some area never occupied by the Chickasaw Nation as its reservation.

Likewise, *Washington v. Confederated Tribes of the Colville Reservation*, 447 U.S. 134 (1980) is irrelevant because it relies upon *Moe v. Confederated Salish and Kootenai Tribes*, 425 U.S. 463 (1976) which in turn is grounded upon the fact that the ability of the state to tax non-Indians engaged in transactions with Indians came from the

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Federal law, and having the right pursuant to 25 U.S.C. § 503 to reassume any powers previously lost in those limited modifications.

grant of authority from Congress found in Public Law 83-280. In *Moe*, the non-Indian was liable for the tax because Congress had not exempted taxation of non-Indians when the general Commerce clause preemption was removed by Public Law 83-280.[12] The non-Indian, because Congress had made state law specifically applicable to him, would be committing a crime by possession of unstamped cigarettes. These cases simply do not apply unless Congress has made state law applicable within the Indian country in question because no crime would be committed.

Finally, *Oklahoma Tax Commission v. United States*, 319 U.S. 598 (1943) was argued just ten days before *Board of County Com'rs of Creek Co. v. Seber*, 318 U.S. 705 (1943) was decided. These cases were decided prior to the 1948 statutory definition of Indian country, and the *Oklahoma Tax Commission* case clearly turned upon the fact that the statute there involved, Act of January 27, 1933, 47 Stat. 777, labeled certain land restricted and tax exempt, authorized taxes upon the oil and gas produced therefrom, and did not then make the funds consisting of mainly accumulated oil and gas royalties non-taxable in

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[12]*See, Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965), in which the opposite result was reached, i.e., a white person was not taxable by the state regarding transactions with Indians in Indian country, in a state where the federal preemption barriers to state tax law as to non-Indians engaged in commerce with Indians had not been removed by Public Law 83-280. There is simply nothing magical about cigarettes, even though the Indians originally provided the tobacco from which they are made. The Warren Trading Post clearly imported processed goods into the Indian country simply to resell them. The logical and consistent legal underpinning of these cases and their progeny flows directly from the decision of Congress, expressed by statute, to allow state tax laws to apply to non-Indians within the particular Indian country areas at issue in *Moe* and *Washington*.

probate proceedings. The interpretation of this act to allow state inheritance taxes upon property specifically declared by Congress to be taxable by the state should not be a news item.

This Court has recognized the principal that the termination of the federal-Indian relationship and the abolishment of Indian country are matters which lie within the exclusive domain of Congress in so many cases that this rule is black letter hornbook law. In this case, Congress has abolished neither tribal government nor Indian country in Oklahoma, and has, in fact, just enacted the Act of October 17, 1988, 102 Stat. 2467 (25 U.S.C. § 2701) recognizing exclusive federal and tribal jurisdiction regarding bingo games such as those engaged in by the Chickasaw Nation at their motel/bingo/smokeshop complex at issue here. This Act, and particularly the tribal-state compact provisions relating to class three gaming, indicates that Congress does not anticipate state taxation of such businesses.

The decisions of this Court, from *Worcester* to the present all reflect, if not in analysis then in final result, a rule which could be stated: "Whenever in the Indian country any person is engaged in commerce (in its broadest sense) with an Indian or Indian tribe, then federal and tribal law completely preempt the application of state law, absent express and unambiguous Congressional action allowing the application of the state law in question." The

Court should affirm the decision of the United States Court of Appeals for the Tenth Circuit.

All of which is respectfully submitted,

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APPENDIX I

SELECTED PROVISIONS OF THE CONSTITUTION OF THE SAC AND FOX NATION[13]

PREAMBLE

We, The People of the Sac and Fox Nation, in order to promote the general welfare, provide for public peace and safety, establish justice, and to secure to ourselves and our descendants our common heritage and inherent right of self-government, as well as any rights or powers which may be granted to an organized Indian tribe pursuant to the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1967), and any other law of the United States of America, do hereby ordain and establish this Constitution of the Sac and Fox Nation, which shall supersede the constitution approved by the Secretary of the Interior on October 27, 1937, and ratified on December 7, 1937, as amended.

ARTICLE II—GOVERNING COUNCIL

SECTION 1. The Supreme Governing body of the Sac and Fox Nation shall be the Governing Council, having all powers herein delegated to it by this constitution. The membership of the Governing Council shall be all members of the Sac and Fox Nation eighteen (18) years of age and older.

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[13]Ratified July 24, 1987.

ARTICLE III—BUSINESS COMMITTEE

SECTION 1. There shall be a Business Committee which shall consist of the Principal Chief, Second Chief, Secretary, Treasurer, and one (1) Committee member who shall be elected by secret ballot.

a. The Principal Chief shall preside at meetings of the governing Council and of the Business Committee. He shall have general supervision of the affairs of the Governing Council and of the Business Committee, shall perform all duties appertaining to the office of Principal Chief, and shall see that the laws of the Sac and Fox Nation are faithfully executed.

b. . . . .

c. . . . .

d. . . . .

SECTION 2. The Business Committee shall have power to appoint subordinate committees and representatives, to transact business and otherwise speak or act on behalf of the tribe in all matters on which the tribe is empowered to act now or in the future and to hire and employ legal counsel to represent the tribe . . . provided that, the Governing Council shall have a veto power after actions by the Business Committee; provided further that, such veto power shall only be binding upon the Business Committee by two-thirds (⅔) majority vote of the Governing Council.

ARTICLE V—COURTS

SECTION 1. The judicial power of the Sac and Fox Nation shall be vested in one Supreme Court of the Sac and

Fox Nation consisting of five (5) Justices and such inferior courts as may be established by tribal law.

SECTION 2. The courts of the Sac and Fox Nation shall be courts of general jurisdiction and shall further have jurisdiction in all cases arising under the constitution, laws, and treaties of the Sac and Fox Nation. The Supreme Court of the Sac and Fox Nation shall have original jurisdiction in such cases as may be provided by law, and shall have appellate jurisdiction in all other cases.

SECTION 3. The Justices and Judges of the Sac and Fox Nation shall be selected by the Business Committee and confirmed by the Governing Council, provided that, Justices and Judges may be appointed by the Business Committee to hear a specific case at the request of the Supreme Court. A special appointment shall continue only until a final decision in the specific case has been reached.

SECTION 4. The Justices and Judges of the Sac and Fox Nation shall serve six (6) year terms beginning at the date of their confirmation in office and until their successor shall be duly confirmed and installed. At the expiration of his term of office, each Justice or Judge, at his option, shall be considered by the Governing Council for reconfirmation to a new term of office without opposition.

SECTION 5. Justices and Judges of the Sac and Fox Nation may be removed from office in the same manner that Business Committee members may be removed from office upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or conviction in any court of a felony or other crime involving moral turpitude. In no case may a Justice or

Judge be removed from office because of his decision or vote in any case before the court.

SECTION 6. The Tribal Courts are hereby specifically authorized to review, in any case before them, the actions of the Governing Council, the Business Committee, or any other tribal officers, agents or entities to determine whether those actions are prohibited by Federal or tribal law or this constitution. If it be found that the action complained of is not within the scope of authority delegated to that body or person by this constitution, or tribal law enacted pursuant to this constitution, or that the action is being undertaken in a manner prohibited by this constitution, tribal law, or Federal law, the courts are authorized to declare any such legislative or executive action unconstitutional and void, and to enter injunctive relief against unlawful actions by any executive officer or body of the Sac and Fox Nation.

ARTICLE X—BILL OF RIGHTS

The Sac and Fox Nation shall not:

1. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble or to petition for a redress of grievances.
2. Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.

3. Subject any person for the same offense to be twice put in jeopardy.
4. Compel any person in any criminal case to be a witness against himself.
5. Take any private property for a public use without just compensation.
6. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for defense.
7. Require excessive bail, impose excessive fines, or inflict cruel and unusual punishment.
8. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
9. Pass any bill of attainder or ex post facto law.
10. Deny to any person accused of an offense punishable by imprisonment the rights, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE XIV

CERTIFICATION OF APPROVAL

I, /s/ Ross O. Swimmer Assistant Secretary—Indian Affairs by virtue of the authority granted to the Secretary of the Interior by the Act of June 26, 1936, (49 Stat. 1967), and redelegated to me by 209 D.M. 8.3, do hereby approve this Constitution of the Sac and Fox Nation. It shall become effective upon ratification by the qualified voters of the tribe in an election in which at least thirty percent (30%) of those entitled to vote case ballots; provided,

that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

/s/ Ross O. Swimmer
Assistant Secretary—Indian Affairs

Washington, DC
Date June 19, 1987

APPENDIX II

SELECTED PROVISIONS OF THE FEDERAL CHARTER OF THE SAC AND FOX NATION[14]

ARTICLE VII
INDIAN REORGANIZATION ACT PROVISIONS

Pursuant to Section 3 of the Act of June 26, 1936, (49 Stat. 1967), and in addition to those powers and authorities vested in the Sac and Fox Nation by existing law, the following essential governmental powers, rights, and privileges secured to organized Indian tribes pursuant to the Act of June 18, 1934, (48 Stat. 984), are hereby conveyed to the Government of the Sac and Fox Nation.

a. Sections 2, 4, 7, 16, and 17 of the Act of June 18, 1934, (48 Stat. 984), are hereby extended to, and shall be in full force and effect as to the Sac and Fox Nation, and the Sac and Fox Nation shall in all respects be deemed upon equal footing, and shall be entitled to all the authority, right, and privileges of a tribe organized pursuant to the Act of June 18, 1934, (48 Stat. 984).

b. The Sac and Fox Nation shall have the right, power, and privilege to negotiate with the Federal, tribal, state, or local governments and to advise or consult with the representatives of the Interior Department on all activities of the Department that may affect the Sac and Fox Nation.

c. The Sac and Fox Nation shall have the right, power, and privilege to employ legal counsel for the protection and advancement of the rights of the Sac and Fox Nation and its members, the

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[14]Ratified July 24, 1987.

choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law.

d. The Sac and Fox Nation shall have the right, power, and privilege to prevent any sale, disposition, lease, or encumbrance of tribal lands, corporate lands, interests in such lands, or other tribal or corporate assets, and to protect such lands and the interest of the tribe in such lands.

e. The Sac and Fox Nation shall have the right, power, and privilege to be advised by the Secretary of the Interior with regard to appropriation estimates for Federal projects for the benefit of the Sac and Fox Nation prior to the submission of such estimates to the Office of Management and Budget, or its successor, and to Congress.

f. The Sac and Fox Nation shall have the right, power, and privilege to make revocable or irrevocable assignments of tribal land pursuant to tribal law to members of the Sac and Fox Nation to tribal agencies, and to corporations wholly owned by the tribe, to make revocable or irrevocable assignments of tribal land pursuant to tribal law to any other person or entity if the land assigned was not owned by the Sac and Fox Nation at the time of ratification of this charter nor purchased by the tribe after the date of ratification of this charter with tribal claims monies held in trust by the United States or the interest earned on such tribal claims monies, except that assignments of such land may be made with the consent of two-thirds (⅔) of the Governing Council, and to regulate by law the use and disposition of all such assignments.

g. The Sac and Fox Nation shall have the right, power, and privilege to appropriate available tribal funds and to borrow money for public and

governmental purposes of the Sac and Fox Nation, to spend available funds appropriated for the use of the tribe by the United States or any other funding agency, and to invest such parts of such appropriated or borrowed funds as are not necessary for immediate expenditure and available for investment in any federally insured investment or any investment guaranteed and insured by any surety or insurance company authorized to give surety bonds to the United States pursuant to Federal law or to insure accounts of trustees, or in notes secured by first mortgages, at not more than ninety percent of appraised value, upon any real property located within the jurisdictional boundaries of the Sac and Fox Nation.

h. The Sac and Fox Nation shall have the right, power, and privilege to protect and preserve by law the property, natural resources, crafts, customs, traditions, health, peace, welfare, and safety of the Sac and Fox Nation, its members, and other persons associated with the tribe.

i. The Sac and Fox Nation shall have the right, power, and privilege to purchase, take by gift, bequest or otherwise, own, hold, manage, operate, and dispose of property of every description, real, personal or mixed, provided, that the Indian title to real property owned by the tribe may be sold, disposed of, or encumbered only pursuant to, and in conformance with, the provisions of an Act of Congress authorizing such sale, disposition, or encumbrance.

j. The Sac and Fox Nation shall have the right, power, and privilege to exercise such further powers as may in the future be delegated to the tribe by the Secretary of the Interior or by any duly authorized officer or agency of the Federal government.

k. The Sac and Fox Nation shall have the right, power, and privilege to enjoy, possess, and exercise any other right or privilege secured to an Indian tribe organized under the Act of June 18, 1934, (48 Stat. 984), as incorporated by reference through Section 3 of the Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1967), including all of those statutory or inherent rights and powers vested or recognized in such Indian tribes by existing law, and any powers and authority vested in a body corporate under the laws of the State of Oklahoma not inconsistent with the tribal constitution or this charter.

l. The Sac and Fox Nation shall have the right, power, and privilege to charter financial institutions and other business organizations and entities, and to authorize and license the doing of business by such institutions, organizations, and entities within the tribal jurisdiction in order to promote the use of the provisions of the Indian Financing Act of April 12, 1974, P.L. 93-262, (88 Stat. 78), the Snyder Act of November 2, 1921, (42 Stat. 208), the Indian Self-Determination Act of January 4, 1975, (88 Stat. 2206), and other Federal laws intended to promote industrial and economic development within the Indian Country, to otherwise promote economic and industrial development, and to tax and regulate by law such institutions, organizations, and entities.

m. To acquire land or any interest therein within the tribal jurisdiction and have such acquisition taken in trust for the Sac and Fox Nation pursuant to Section 5 of the Act of June 18, 1934, (48 Stat. 1984).

The foregoing express delegation of authorities is supplemental to, and expressive of, a portion of the general authorities delegated to the Business Committee in the Constitution of the Sac and Fox Nation and is designed and intended to take advantage of all of the delegations of authority from the Federal government to the government of the Sac and Fox Nation pursuant to the within noted, and all other Acts of Congress. This article shall therefore be interpreted in accordance with this intent, and shall not be deemed to constitute a limitation upon any power or authority which could be exercised by the government of the Sac and Fox Nation pursuant to this constitution without delegation of authority from the Federal government, nor to allow any of the powers and authorities stated herein to be exercised in a manner prohibited by the tribal constitution.

ARTICLE VIII
TRIBAL RIGHTS AND PROPERTY

Any rights and powers heretofore or hereafter vested in the Sac and Fox Nation, not referred to generally, expressly, or by implication in the constitution or charter of said tribe, shall not be abridged, but may be exercised by the members of the Sac and Fox Nation, through the ratification of appropriate amendments to the constitution or charter of the said tribe. No property rights or claims, nor the governmental authority of the Sac and Fox Nation, existing prior to the ratification of this charter shall be in any way impaired by anything contained in this charter. The tribal ownership of unallotted lands, whether or not occupied by any particular individual or agency, is hereby expressly recognized.

[Issued June 19, 1987, in Washington, DC, by Ross O. Swimmer, Assistant Secretary—Indian Affairs.]